

37.102 Policy.

(a) Performance-based acquisition (see [subpart 37.6](#)) is the preferred method for acquiring services (Public Law106-398, section 821). When acquiring services, including those acquired under supply contracts or orders, agencies must-

(1) Use performance-based acquisition methods to the maximum extent practicable, except for-

(i) Architect-engineer services acquired in accordance with [40 U.S.C.1101](#) *et seq.*;

(ii) Construction (see [part 36](#));

(iii) Utility services (see [part 41](#)); or

(iv) Services that are incidental to supply purchases; and

(2) Use the following order of precedence (Public Law106-398, section 821(a));

(i) A firm-fixed price performance-based contract or task order.

(ii) A performance-based contract or task order that is not firm-fixed price.

(iii) A contract or task order that is not performance-based.

(b) Agencies shall generally rely on the private sector for commercial services (see OMB CircularNo.A-76, Performance of Commercial Activities and [subpart 7.3](#)).

(c) Agencies shall not award a contract for the performance of an inherently governmental function (see [subpart 7.5](#)).

(d) Non-personal service contracts are proper under general contracting authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed. To the maximum extent practicable, the program officials shall describe the need to be filled using performance-based acquisition methods.

(f) Agencies shall establish effective management practices in accordance with Office of Federal Procurement Policy (OFPP) Policy Letter93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting.

(g) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

(i) Agencies shall ensure that service contracts that require the delivery, use, or furnishing of products are consistent with [part 23](#).

Parent topic: [Subpart 37.1 - Service Contracts-General](#)